

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 338

SPONSOR: Appropriations Subcommittee on General Government and Senator Constantine

SUBJECT: Brownfield Loan Guarantees

DATE: April 13, 2004      REVISED: 02/17/04 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	<u>DeLoach</u>	<u>Hayes</u>	<u>AGG</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute for Senate Bill 338 provides that no more than \$5 million of the balance of the Inland Protection Trust Fund in a fiscal year may be at risk at any time on loan guarantees for the Brownfield Areas Loan Guarantee Program. The loan guarantee program is extended to 2007. The Legislature must review the program by January 1, 2007, and no new loan guarantees may be approved in 2007 until the review by the Legislature has been completed and a determination made as to an appropriate trust fund to serve as a contingency fund on loan guarantees.

The bill provides immunity from liability for property with environmental contamination that escheats to the county that is located within a designated brownfield area.

The bill substantially amends s. 376.86, F.S.

**II. Present Situation:**

In 1997, the Legislature created the Brownfields Redevelopment Act<sup>1</sup> to provide incentives for the private sector to redevelop abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

A local government must designate a brownfield area through the passage of a local resolution. The local government must notify the Department of Environmental Protection and attach a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or,

<sup>1</sup> Sections 376.77-376.85 may be cited as the “Brownfields Redevelopment Act.”

alternatively, provide a detailed legal description. A property owner within the proposed designated area may request in writing that his property be removed from the proposed designation.

Local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish an advisory committee for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local employment opportunities, community safety, and environmental justice.

The act provided that different standards than those in place for new development should be used to the fullest extent to encourage the redevelopment of a brownfield area. State and local governments are encouraged to offer redevelopment incentives which may include financial, regulatory, and technical assistance.

In addition, the 1997 Brownfields Redevelopment Act provided for brownfield redevelopment bonus refunds. A bonus refund of \$2,500 was available to any qualified target industry business for each new Florida job created in a brownfield area which is claimed on the qualified target business's annual refund claim authorized in s. 288.106(6), F.S., and approved by the director of the Office of Tourism, Trade, and Economic Development (OTTED).

In 1998, the Legislature amended the Brownfields Redevelopment Act to address several glitches that had been identified since the passage of the act and to make certain changes to enhance the usage and success of the program. One such change was the creation of the Brownfield Areas Loan Guarantee Program<sup>2</sup>. The Brownfield Areas Loan Guarantee Council was created to review, approve, or deny certain partnership agreements with local governments, financial institutions, and others associated with the redevelopment of brownfields for limited guarantees of loans or loss reserves. The council may enter into an investment agreement with the Department of Environmental Protection and the State Board of Administration concerning the investment of the earnings accrued and collected upon the investment of the balance of funds maintained in the Nonmandatory Land Reclamation Trust Fund. No more than \$5 million of the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund may be at risk at any time on loan guarantees or as loan loss reserves.<sup>3</sup> Of the \$5 million, 15 percent shall be reserved for investment agreements involving predominantly minority-owned businesses. The investment earnings may not be used to guarantee any loan guaranty or loan loss reserve agreement for a period of longer than 5 years.

The limited state loan guarantee applies only to 10 percent of the primary lenders loans for redevelopment projects in brownfield areas. A lender seeking a limited state guarantee for a loan from the Brownfield Areas Loan Guarantee Council must first provide to the council a report demonstrating that the lender has reviewed the project for redevelopment of the brownfield areas and determined its feasibility in accordance with its standard procedures. A lender may not file a

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<sup>2</sup> The Brownfield Areas Loan Guarantee Program is codified in s. 376.86, F.S.

<sup>3</sup> In 2003, ch. 2003-399, L.O.F., the Appropriations Implementing Bill, amended this section to provide that for 1 year only, not more than \$1.5 million of the balance of the Nonmandatory Land Reclamation Trust Fund would be at risk for the loan guarantees. This is because this trust is rapidly being drawn down due to the cleanups ongoing at the phosphogypsum stacks at Piney Point and Mulberry. This provision expires on July 1, 2004, at which time the statutory provisions revert back to the \$5 million reserve amount for loan guarantees.

claim for loss pursuant to the guaranty unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are exhausted.

The provisions relating to the Brownfield Areas Loan Guarantee Program must be reviewed by the Legislature by June 30, 2004, and a determination made related to the need to continue or modify this section relating to the Brownfield Areas Loan Guarantee Program. New loan guarantees may not be approved in 2004 until the review by the Legislature has been completed and a determination has been made as to the feasibility of continuing the use of the Nonmandatory Land Reclamation Trust Fund to guarantee portions of loans made pursuant to this program.

To date, the loan guarantee provisions have been used only one time. That project involved a shopping center and an out-parcel in a Clearwater brownfield area. According to OTTED, the loan guarantee mechanism worked as it was designed to do. With the loan guarantee, the developer is not required to put up as much upfront cash for the project and has more financial flexibility. The loan guarantee holds until permanent financing is acquired or until the project is sold. In this case, the project was sold last fall and the loan guarantees are no longer needed or applicable.

One of the reasons that the loan guarantee program has not been used more frequently is that the loan guarantee program was not well understood and the process for developing in a brownfield area may be cumbersome and time-consuming. The developer for the project that did use the guarantee program has been actively promoting the program to others wishing to develop in a brownfield area. OTTED has indicated that other projects have expressed an interest in using this program but have not yet submitted applications. These projects take a long time to mature and move through the process slowly. According to s. 376.86(8), F.S., no new loan guarantees may be approved in 2004 until this section has been reviewed by the Legislature; therefore, OTTED would not be able to approve an application until after the 2004 legislative session.

Brownfield areas generally exist near distressed and urban neighborhoods. The shopping center that is being built in the Clearwater brownfield area will benefit the surrounding neighborhoods by giving them shopping and retail opportunities that they did not previously have.

### **III. Effect of Proposed Changes:**

**Section 1.** The bill amends s. 376.86, F.S., relating to the Brownfields Areas Loan Guarantee Program to provide that no more than \$5 million of the balance of the Inland Protection Trust Fund in any fiscal year may be at risk at any time on loan guarantees or as loan loss reserves. The bill provides that the provisions of s. 376.86, F.S., pledging \$5 million from the Inland Protection Trust Fund as a contingency on loan guarantees, shall be reviewed by the Legislature by January 1, 2007, to determine the ability of that trust fund to continue serving as a contingency fund on loan guarantees. No new loan guarantees may be approved in 2007 until the review by the Legislature has been completed and a determination made as to an appropriate trust fund to serve as a contingency fund on loan guarantees.

**Section 2.** The bill amends s. 376.86, F.S., to include liability protection for environmental contaminated properties that escheat to the county. The county may not be held liable for

implementing corrective actions at a contaminated site within an eligible brownfield area as a result of the involuntary ownership of the site. The liability protection is provided unless the county has otherwise caused or contributed to a release of a contaminant at the brownfield site.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As more development occurs in brownfield areas, the use of the loan guarantee provision is expected to increase. This provision allows developers to proceed with their plans in brownfield areas without having to put up as much cash upfront. Distressed neighborhoods benefit by receiving shopping and other retail opportunities in their area that they did not previously have.

C. Government Sector Impact:

The development of brownfield areas benefits local governments by revitalizing urban and other underused areas and providing additional revenues to the local economy. Such developments create jobs and enhance the standard of living in the area of the development.

Currently, brownfield areas loan guarantees come from a set-aside from the investment earnings earned on the investment of the minimum balance of the Nonmandatory Land Reclamation Trust Fund. This bill provides that the set-aside will be \$5 million of the balance of the Inland Protection Trust Fund. Recently, the amount in the Nonmandatory Land Reclamation Trust Fund has been declining at a faster rate than was previously expected primarily due to the expensive cleanup efforts of the phosphogypsum stacks at Piney Point and Mulberry. As a result, ch. 2003-399, L.O.F., the appropriations implementing bill, reduced the guarantee amount to \$1.5 million for one year only until July 1, 2004. This was enough for OTTED to guarantee the pending project, but in the long run the \$1.5 amount would not be enough to generate interest in using the program.

The viability of using the Nonmandatory Land Reclamation Trust Fund as a guarantee for future brownfield loans is not possible due to the ongoing cleanup costs of Piney Pont and Mulberry.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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